



THE COMMONWEALTH OF MASSACHUSETTS

WATER RESOURCES COMMISSION

100 CAMBRIDGE STREET, BOSTON MA 02114

Meeting Minutes for December 9, 2004

Members in Attendance:

John Clarkeson	Designee, EOEa
Marilyn Contreas	Designee, DHCD
Glenn Haas	Designee, DEP
Gerard Kennedy	Designee, DAR
Mark Tisa	Designee, DFG
Mike Gildesgame	Designee, DCR
Joseph Pelczarski	Designee, CZM
David Rich	Public Member
Matthew Rhodes	Public Member
Gary Clayton	Public Member
Bob Zimmerman	Public Member

Others in Attendance:

Linda Marler	DCR
Michele Drury	DCR
Sara Cohen	DCR
Ron Sharpin	DCR
Steve Garabedian	USGS
Ted McIntire	Town of Reading
Peter Tassi	Town of Reading
John Gall	CDM
David Brew	MWRA
Margaret Kearns	Riverways
Jessica Stephens Siler	ELM
Duane LeVangie	DEP
Martha Stevenson	League of Women Voters
Kerry Mackin	IRWA
Eileen Simonson	WSCAC

Agenda Item #1: Executive Director's Report

Gildesgame stated that he had been asked to chair the meeting as Honkonen was away. Clarkeson was representing EOEa.

Tisa suggested that letters of appreciation should be sent to the former members thanking them for their years of service. Simonson added that she had mentioned this to Jim Stergios as well.

Marler provided an update on the hydrologic conditions:

- Conditions are good. November's precipitation appears to be near normal. The two-month precipitation statistics are on the low side, as a result of October's precipitation being below normal. December, so far, is ahead of schedule for normal and it looks like there will be another inch of rain over the weekend.
- Ground water and streamflow levels in November were normal throughout the state.
- Reservoir levels are refilling after the summer decline.
- The precipitation forecast for December is for above normal. The long-range forecast for January, February and March is showing below norm precipitation, but it is too early to tell.

Drury noted for the Executive Director's Report that the required public hearings for the Cummingsville Interbasin Transfer are scheduled for next Thursday, December 16th. She hoped that the Commissioners would attend.

Gildesgame said that he had been asked to take the Reading discussion out of turn, due to scheduling issues of a few Commissioners.

Agenda Item #3: Vote – Staff Recommendation Regarding Reading's Request under the ITA to Join the MWRA Waterworks System

Gildesgame urged that discussion of this topic be focused and that any remarks made be concise. Drury reminded the Commission that this proposal had been discussed in detail at the July WRC meeting and during the Executive Director's report in November. A summary of the changes from the July Staff Recommendation was included as a cover sheet to the Draft Decision sent out for this meeting. A list of the conditions, as they appear in the December Draft Decision and as they appeared in the July Staff Recommendation, was distributed. In July, Staff reported that Reading had concerns with the June Staff Recommendation. The town was concerned that the conditions of the June Staff Recommendation would restrict the flexibility it had in operating their system. Staff and the Town had several meetings over the summer to negotiate conditions that would meet the requirements of the Interbasin Transfer Act, but still address the Town's concerns. The town officials in the audience were acknowledged. In addition, as discussed last month, Reading has met many of the conditions that were in the June Staff Recommendation, so these have been eliminated from the December document.

Drury noted that there has been a lot of interest in this Draft Decision, but many of the issues that have been raised with this draft were raised earlier and responded to through the formal response to comments, which was provided to the WRC in August. Drury redistributed this document.

Issues:

- One issue raised is that the WRC is not regulating the use of Reading's existing sources. Drury explained that this is beyond the jurisdiction of the Interbasin Transfer Act. This is a transfer from the Chicopee and Nashua River basins into the Ipswich River basin, therefore our authority over the use of Reading's local sources is limited. In fact, the Interbasin Transfer Act requires maximizing the use of local sources before a transfer can be approved. It is hard not to acknowledge the fact that water withdrawals in the Ipswich basin, especially in the headwaters where Reading is located, are having an impact on streamflows in the Ipswich River. Reading is being required as a condition of approval to use its sources as originally proposed, limiting withdrawals to 1 mgd from May through September. Reading has committed to this.

- Another concern that was raised was that streamflow requirements of the Performance Standards are being waived. Drury said that these are not being waived but that the Performance Standards allow a proponent to show that there are alternate means to meet a standard. This is discussed on pages 7, 25 and 26 of the Draft Decision. Reading has demonstrated to Staff that the restrictions and water conservation programs in place provide the same results as having streamflow restrictions in their drought/emergency management plan. Drury reminded the Commission that these are performance standards, not regulations. Reading has agreed to impose streamflow restrictions in the event that they reach the limit of the Interbasin Transfer approval. This is outlined in Condition 1 under Criterion #2, on page 26 of the Draft Decision.

- Another issue that has been raised is that a more lenient approach is being taken to Reading than to other Ipswich River basin communities. Drury pointed out that Reading's application was subject to the criteria of the Interbasin Transfer Act, not the Water Management Act. Reading was evaluated in a manner consistent with all other Interbasin Transfer Act applications. The requirements of the Water Management Act are beyond the jurisdiction of the Interbasin Transfer Act. Reading is under its Water Management Act registration, and therefore they are not subject to the requirements of a Water Management Act permit. Reading has agreed to include conditions on their registration as a result of their purchase from MWRA. One of those conditions agreed to is that MWRA water will not be used to increase the amount of water Reading can use. Reading will be limited to their registration amount from any combination of their sources and MWRA water. Drury distributed a letter from the town to DEP agreeing to modify their registration statement. This was also required by the Secretary's certificate on the FEIR.

Tisa asked if amendment of the registration extended Reading's registration, or will it still expire in 2008. LeVangie replied that this did not extend the registration. Reading's registration will expire on January 1, 2008, unless they request to renew it before then.

- Another comment was that the WRC should require Reading to purchase more water from the MWRA, rather than use its own sources, in the event it reached the Interbasin Transfer approval limit before the end of September. Drury replied that Reading is not under any obligation at all to purchase water from the MWRA. The WRC doesn't have the authority to make the Town purchase more. Reading wanted to have operational flexibility. Purchasing water is always an option under an emergency declaration or an additional Interbasin Transfer Act review, in the event Reading decided it needed to purchase more in the future. Reading recognized a problem and volunteered to come up with a solution. They are not under any obligation to do this. The Town is under its Water Management Act registration. They are looking to the future. This will not solve all of the Ipswich River's problems, but it is a start.

Zimmerman wanted to know how long the public had to review all these changes. Drury said that public hearings were held in May; and Zimmerman said that there are lots of changes and letters that he had only just seen. Drury responded that the Commission was apprised of what was going on last month, so it has been public knowledge since then. The Draft Decision came out with the December WRC mailing, but this has been a topic of conversation at the WRC meetings since July. Zimmerman said, but still, there are a lot of changes. He referred to a letter from the town of Reading dated November 28, 2004. Drury replied that the letter in question was to the Department of Environmental Protection concerning the Water Management Act registration. The information in the letter had been outlined as a requirement of the Certificate

on the FEIR, which came out in 2003. Gildesgame stated that he was not sure what impact the letter to DEP would have on an Interbasin Transfer Act decision. Drury added that it has also been discussed at Commission meetings that Reading would be amending its registration statement. Drury stated that the public had gotten all notifications as required under the Interbasin Transfer Act and its regulations. Zimmerman said that this didn't answer his question. Gildesgame again asked how the November 28th letter would affect the decision today, noting that it simply was Reading's agreement to abide by the Secretary's certificate of 2003. Zimmerman responded that he wasn't sure if Reading is limiting its withdrawal to its current withdrawal, and there was no commitment from the town in the past to do so. He felt that this information would have a pretty significant impact on the decision. Drury noted that the Secretary's Certificate had come out in September 2003. If one compares the letter with the certificate, it goes through the same points that the Secretary required. So this has been in the public realm for a while. It is a follow-up to the requirements of the Secretary's Certificate.

Mackin stated that she had received her WRC package with the revised Staff Recommendation two days ago. This was the first time she had seen these changes. To give the public two days to react to these changes, she said, undermines the confidence of the public to the openness of this process. She respectfully requested that the WRC entertain a continuance to give the public and others the opportunity to review these changes. Drury repeated that this had been discussed at the WRC meeting last month, specifically because of these changes. Staff wanted to make sure that the WRC was aware of them and had time to consider them. This has been public knowledge for a month.

Simonson said that she didn't understand why the WRC couldn't require the town to buy more water from the MWRA to meet the Ipswich River streamflow requirements, which, she stated, are a part of the Act. Gildesgame reminded Simonson that the streamflows of concern under the Act are in the donor basin (Chicopee and Nashua). The Act does not give the Commission jurisdiction over the streamflows in the receiving basin (Ipswich). Simonson claimed that the reason the WRC accepted this application was under the guise of improving streamflows in the Ipswich basin. She said "You have to look at the whole package! It seems to me, we should get a cost estimate from the MWRA or the town of what it would mean for them to buy more water through October."

Marler gave a presentation of the technical analyses. Reading will continue to use its existing sources, wells in the headwaters of the Ipswich basin. The Town is proposing to limit the use of these wells to 1 mgd for the time period of May through September. This is a change from the June Staff Recommendation, when the proposal was to limit withdrawals and purchase water from May through October. Reading is proposing to supplement its water needs during these months with a purchase of 219 million gallons (mg) from the MWRA. On average, this represents 1.44 million gallons per day (mgd). The Town has agreed to include MWRA water within the "cap" of their Water Management Act registration, rather than as an add-on. The existing sources are nine wells in the Ipswich River basin. The capacity of these wells (combined) is 8.36 mgd, considerably above Reading's registration of 2.57 mgd and average day demand of 2.0 mgd. However, the wells are located near industrial sources, which have experienced ground water contamination and contamination from nearby Route 93. The Town's wells are vulnerable to that contamination. These wells also contribute to streamflow depletion in the Ipswich River.

Marler noted some of the changes in the proposal since July:

- Reading has modified the period when they will purchase MWRA water back to May through September, as originally proposed in the DEIR. This changes the amounts used in the analyses. For the May through October time period, discussed under the initial ITA review, Reading would have purchased, on average 1.2 mgd (1.8 cfs). If Reading was to take the 1 mgd proposed from their own sources plus the average 1.44 mgd now proposed from the MWRA, the summer demand would be 2.44 mgd. This results in a summer to winter ratio of 1.22, which meets the DEP WMA policy for communities doing a good job of conservation. This seemed reasonable to Staff. This will allow Reading to have enough water to meet their current demands. Many communities had ratios much higher in 2003. Reading will be held to this amount. Zimmerman noted that in 2003 we had an exceptionally wet summer where demand on public potable water supply for irrigation of lawns was way down. Drury added that Reading had water restrictions in place since 1992. Clayton asked about the ratio. Drury responded that under DEP's Water Management Act policy, when communities are at certain ratio levels, DEP requires a certain percentage reduction in water use. At 1.2, DEP does not require water use reduction. Mackin stated that her numbers for Reading during the last few years were much higher. Marler said that Staff looked at a summer use of 2.44 mgd and Drury asked how Mackin was calculating the numbers. When WRC staff looked at this, they used DEP's formula.

Marler said that staff looked at the impacts of taking October out of the analysis. Reading's October average demand is 1.72 mgd (or 2.7 cfs). DEP's streamflow requirements for the Ipswich River Water Management Act permits are discontinued in October. Given this and the impacts to the donor basin and the fact that the growing and lawn watering season is over in October, it was felt that it was equitable to take October out of the purchase period.

- Flows in the Ipswich River were also examined under this scenario. Marler stated that at the South Middleton gage, the mean October streamflow is 51 cfs. This is much higher than in July, August and September, as shown on the graph she presented. Marler reminded the WRC that under the Interbasin Transfer Act, the Commission's charge is to protect the donor basin from unacceptable environmental impacts. The Commission is under no obligation to look at impacts to the Ipswich River, the receiving basin, from a transfer. Zimmerman differed: "Except the whole reason that Reading is before us is because of impacts to the Ipswich River basin." Marler continued that the criteria Staff is charged with advising the Commission on do not include results in the Ipswich River. Zimmerman interjected: "But the Ipswich River is why they're here. So we have to take that into consideration as we look at the impacts to the Swift River." Marler continued that after Reading apprised Staff that they wanted to change the transfer schedule from October to September, the analyses of the impacts to the donor basin were examined to determine if they changed. There was no significant change in any of the impacts.

- The issue of tying water use to streamflow restrictions in a drought/emergency management plan, which is a requirement of the Performance Standards, was also examined. Reading has demonstrated that the current water use restrictions in place and restricting use of their wells to 1 mgd through the summer months are as protective of the streamflow in the Ipswich River as using the DEP streamflow restrictions applicable under the Water Management Act. Reading has also agreed to tie their well use to DEP's streamflow restrictions in the event that they exceed the Interbasin Transfer limit meaning that if the Town does have to use its own wells during the May-September time period at levels greater than 1 mgd, it will be subject to the streamflow thresholds. Marler showed a graph from the DEIR, where the May through

September time period was originally proposed. It is a flow duration curve which outlines a number of scenarios. The curves which demonstrate impacts from using the Reading wells as proposed and in imposing streamflow restrictions are virtually identical. She concluded that this demonstrates that there is not a significant difference in either requirement.

Under Reading's proposed scenario, they will keep the operational flexibility they need to keep their treatment plant running. Tisa asked which streamflow thresholds were used in the graph. Marler replied that these were the thresholds that DEP was using in their Water Management Act permits for the Ipswich River. Zimmerman asked if there's no difference then why doesn't the proponent accept the threshold. Marler said that it was because of operational considerations, so Reading wasn't constantly turning their water treatment plant on and off all summer.

Zimmerman replied: "But there's no difference." Marler answered that the Performance Standards allow Reading to demonstrate that there is an alternate means to realize the same protections. She stated that in looking at this graph, she thought it was clear that Reading's proposal provides the same protections. Zimmerman said: "I respectfully disagree. If the streamflow thresholds are there and if they're triggered, that's more protective than behaving as if 1 mgd is fine. ... I'm not sure we are seeing the appropriate reach. But if the science suggests they're the same, to have the more protective thresholds there doesn't change what everybody knows. That's essentially what the science is saying so we would keep the more protective thresholds." Marler suggested that this was for the Commissioners to decide. She continued that she had looked at this graph at different scales--the 75 percentile and higher flow durations, the lowest of the low flows--to see if she could ascertain any greater difference and she could not. Reading's proposal looks like it is equally protective at all levels.

Garabedian asked which point of the Ipswich River the flow duration curve represented. Marler was unsure but thought it was the South Middleton gage. Zimmerman and Mackin felt that staff should use the USGS HSPF model and analyze the flow duration data for Reach 8 of the Ipswich River, where the Reading well impacts are most pronounced.

Mackin asked if the 1 mgd and the even/odd restrictions are in place. Drury answered that these assume the same conservation restrictions will be in place. Mackin repeated: are those even/odd? What are the restrictions? Drury answered that these have described in detail in the EIR and are repeated in Table 1 in all the Staff Recommendations and the Draft Decision. The restrictions are in the Town's bylaw. Gildesgame said that the conservation restrictions that are in place are acceptable and the restriction of pumping will provide the protection we are looking for. Mackin said that there will be less protection for the Ipswich once the MWRA water purchase is exhausted. Gildesgame repeated that under the Interbasin Transfer Act, the Commission doesn't have the authority to make Reading purchase more water. Drury added that the conditions require Reading to continue with its conservation program.

Simonson said "I didn't see that they were required to continue the same level of constraint on outdoor water use that they ... have had in place in 1992." She asked McIntire if this was true. McIntire said that this was not true. In fact, he said, the Selectmen had recently eliminated voluntary restrictions. Now mandatory restrictions are required. Simonson continued "But don't you now have a hand-held requirement?" She asked if this would be eliminated once this approval was given. McIntire said no, it will now be more restrictive. Drury pointed out that on page 27 of the Draft Decision, there was a requirement that said: "Reading must continue effective demand management programs that meet the Interbasin Transfer Performance

Standards for Criterion #3, Water Conservation.” Simonson said: “I agree that the Staff of the Commission is constrained to consistently look at the law as it has been looked at historically. I object to the statement that you condition conservation programs or something else that’s not in the legislation. The implication is that you can’t force certain actions. You can force certain actions by having retained the through October 31st ... use of 1 mgd. You can take those things in your jurisdiction and configure them in a way that really means a better standard for streamflow protection and conservation. So I think its kind of a red herring to say that the Ipswich is not in your jurisdiction.” Marler repeated that Reading had agreed to amend its registration statement to limit the amount of water used from all sources, including the MWRA, to the current registered amount. They have also agreed to apply the streamflow thresholds if the amount of water purchased from MWRA if the Town reaches the Interbasin Transfer limit before the end of September.

The presentation of new information was concluded. A re-cap of the initial analysis could be continued, but it was suggested that the Commission may wish to discuss the application at this time, and forego the information presented at previous meetings.

Rich stated that if the WRC voted to approve this transfer, the town of Reading will withdraw only 1 mgd from its wells in the summer months and if it doesn’t approve this, the town of Reading will be withdrawing about 2.44 mgd during the summer months from its own wells. He said that it was pretty clear to him which decision would have the most negative effect on the Ipswich River. He agreed that it might be a good idea for Reading to purchase more water, but he viewed this as an operational issue that should be left up to the town of Reading. The Commission has two options, he said; “Which protects the Ipswich River more?” Rich felt that a vote against this proposal would be a vote against the Ipswich River.

Zimmerman moved to continue the vote to the January 13, 2005 meeting to allow for greater public review and comment on the WRC staff recommendation and to allow the WRC staff to run the hydrologic model for segment 8 for the Ipswich River under the proposed water use regimes. It was seconded by Clayton. Drury stated that the Commission is required to make a decision 60 days after the close of the last public hearing, unless both the Commission and the proponent agree in writing to extend it. This has been extended twice already. Reading would need to agree to extend the vote a third time. Zimmerman asked Reading’s representatives if they would be willing to extend it another month. McIntire said the Town respectfully requested a decision today.

Zimmerman then said “There are other venues to decide this.” Gildesgame asked him to explain what he meant. Zimmerman answered “There’s the courts in the State of Massachusetts the last I looked.” Rich said that he did not want the Commission to intimidate people. “This concerns me. There are options, let them play out. I really have a concern that we sit here as voluntary public servants and make statements that in fact intimidate applicants.” Zimmerman responded that he had “...no intention of intimidating the proponent. However there is new information that’s been presented to this Commission that the public has had two days to review, some of which it hasn’t reviewed at all. It’s very important in terms of our making this decision and not to allow the public an opportunity to review and comment on this is unconscionable. And I will do whatever is necessary to make certain the public gets that opportunity.”

Gildesgame said that without a joint agreement to extend the vote, the Commission is required to vote today. Zimmerman asked when the last extension had been. Drury replied that the vote had

been extended until today. Zimmerman asked to see the letter extending the vote. Drury replied that she did not have the letter. Honkonen had sent it and he was not present. She pointed out the clause in the regulations which requires the vote within the time frame discussed. Zimmerman said he thought this was ridiculous.

Simonson said the WRC was supposed to vote on this on November 4th; then the town asked for an extension because there was more work to be done. She stated that the town should allow this to be extended until the January meeting.

She didn't understand what was meant by the term 'calendar year', with respect to MWRA water purchases by Reading. She said she thought there is too much confusion here. Drury replied that Reading asked for an extension until November 4th. They provided Staff with additional information to support their proposal to purchase water only until September. Staff did not have enough time to evaluate this and bring it in its final form to the November meeting, so Staff asked Reading for an extension. An overview of the new information and the opinion of Staff concerning the analysis of this information were presented to the Commission last month. This was presented to the WRC so that they would understand why they were not voting in November. The issue of the calendar year is explained by the MWRA's contracts which run in the calendar year (January 1st to December 31st). Reading has committed to restrict its withdrawals during the summer months unless it meets the 219 mg cap on the transfer.

Gildesgame reminded the Commission that there was a motion on the table. He asked if it is a valid motion, noting that without the Town's concurrence to extend the decision, it is not a valid motion. Zimmerman said that if the motion was voted on, it would act as a poll of the Commission. Gildesgame said a poll of the Commission could be taken, but the motion was not valid. Clayton suggested that the motion be withdrawn, as it was not valid. Drury added that if the Commission did not vote on the application today, according to opinions she's had in the past from legal counsel, the application is approved by default. Zimmerman insisted that before withdrawing the motion, that a poll of the Commission be taken. Clarkeson said that according to Roberts Rules of Order, either there is a motion, or there is not. He said that according to the discussion, the motion is likely invalid, so it should be withdrawn. Once the motion is withdrawn, a poll of the WRC can be taken. Zimmerman retorted "I think Roberts Rules are wrong, but I'd be happy to withdraw the motion." The motion was withdrawn.

Gildesgame then took a poll of the Commission. Clayton said that depending on the outcome of the poll, the Commission might ask the Town to reconsider its position on the vote. Tisa said he was hoping that the Town would grant an extension because over the last couple of days he has been trying to digest this information and has been discussing it with staff. He is uncomfortable with his understanding about a certain number of things and would like another month to consider. Zimmerman said he'd like the minutes to show this statement: "We don't know what segment of the river we were shown today whether it's South Middleton or North Timbuktu. We certainly don't know whether it's that segment of the river, which we could run with the hydrologic model to show the impact of this plan on segment 8, which is the one nearest the Ipswich River wells for the town of Reading. It seems to me that there are a number of questions about the recommendation itself that need to be clarified. It seems to me that are a number of things that we don't know about impacts to the Ipswich River with streamflow etc. and yet we are being asked to move forward with this vote. Under those circumstances, I don't think the

Commission has any choice but to vote this down.” Gildesgame then took the poll that had been requested by Zimmerman. Only three Commissioners were in favor of extending the vote.

Mackin stated the point was not really whether or not Reading would withdraw 1.0 mgd or 2.44 mgd from the Ipswich basin in the summer months. It also has to do with the conditions the WRC has the authority has to impose. Staff is making the point that the WRC has no authority over protection of streamflow in the Ipswich River, however, she said, the whole basis for approving the Interbasin Transfer is the fact that the Ipswich River sources are not considered viable during the summer months because of the damage to the River. So, she said, the whole viability issue is based on streamflows in the Ipswich River. That is where the WRC has the authority over streamflows in the Ipswich River, she said. It was stated that the WRC’s authority is under the ITA, not the WMA. She said the Performance Standards require the use of streamflow triggers. “Why are you waiving this authority?” she asked. Mackin said that Reading is having the biggest impact on the river. According to the USGS study, if Reading reduces its summer withdrawals by 50%, this results in some improvement. The river will dry up only approximately every other year instead of every year as it does on average currently. This is certainly an improvement, but things could be better. If this transfer is approved, and the river dries up, Reading will not be subject to any streamflow triggers, whereas every single town around them will be. This is terribly unfair, she said. Mackin said “We (IRWA) will emphasize to the press, we will say the Water Resources Commission exempted Reading from the requirement that was made of every other single community in the basin.” She added that October flows are very low. She said that the numbers she had for flows were different from Staff’s. She said that the WRC should require Reading to restrict use of their sources in October and buy more water from MWRA. She said that she had contacted Staff to obtain the most updated Staff Recommendation a month ago and was told at that time that the latest Staff Recommendation was July’s. To receive the revised Staff Recommendation two days before the meeting, she said, is not reasonable. She asked Reading to reconsider their opinion and allow a vote in January.

Haas asked if anyone had any comments concerning impacts to streamflow in the donor basin, which is the Commission’s charge under the Act. It seemed to him that the argument was about whether or not this proposal helps the receiving basin enough, which is not the Commission’s charge under the Act. If this is not approved, Reading will be pumping more water from the receiving basin. If this is approved, they will be pumping less. He said the opponents seem to be saying to Reading, thank you for your offer but it is not good enough, so go away. There have been no changes to the impacts to the donor basin, which the Commission is charged to consider, under this scenario. No one is commenting on this. If the donor basin is not impacted, he did not understand the concern that the benefits to the receiving basin were not good enough.

Gildesgame asked if there were specific changes in the December Staff Recommendation which substantially altered the Staff Recommendation. Mackin answered that the “waiver” was a change that substantially altered the Staff Recommendation. Drury answered that the July Staff Recommendation contained a condition concerning the drought management plan which required that Reading alter its drought/emergency plan to tie water use restrictions to streamflow levels in the Ipswich River or demonstrate that the proposed reduction of well use and the outdoor water use restrictions currently in place in its drought plan and by-laws provide an equivalent amount of protection for environmental resources. This is allowed by the Performance Standards. Over the summer, Reading demonstrated to Staff’s satisfaction that the

outdoor water use restrictions currently in place in its drought plan and by-laws provide an equivalent amount of protection for environmental resources. So this is not a waiver. We are working within the framework of the Performance Standards which do allow for a proponent to provide alternate means to meet the criteria. Zimmerman retorted “That’s called the ‘trust me’ argument”. Drury responded that Staff had data that showed that Reading’s proposal would meet this criterion. Zimmerman replied angrily “No you don’t! What you showed us we don’t know what stream segment it was. You do not have the data to prove that. You do not!” Drury answered that this information had been presented in the DEIR. This information has been public for more than a year.

Simonson said that the analysis shows that somewhere between 7-20% of the spillage flow from the Quabbin Reservoir would be reduced by the Reading withdrawal. The Swift River downstream of the reservoir, she said, receives the August median flow practically in perpetuity by law. But in no way, she emphasized, can anyone say that the downstream Swift River is getting its due. She referred to the issues with DFW, which would prefer to have warm water spills curtailed, but in fact, she claimed, the donor basin is severely impacted by a lack of spillage. She stated that this is because MWRA’s water demand is down. Gildesgame asked if WSCAC had commented on this earlier. Simonson answered that WSCAC had commented on this at every public hearing.

Simonson still did not understand how the term calendar year was used. She added that October was a critical month for the Ipswich River; therefore, Reading should extend its purchase from MWRA until this time. She said Reading does not want to do this and she wants to know why. She said that if this transfer was to be approved she thought it should benefit the Ipswich River to the maximum extent.

Clayton had to leave at this point due to a prior commitment.

Drury explained that the analysis indicated that if Reading went to the scenario where they were shutting off their wells, they may need to purchase more water from the MWRA. This would require additional ITA review and approval. This resulted in the condition requiring that, after the new water treatment plant is on-line in Reading, if an alternative withdrawal scenario is proposed, Reading must consult with WRC Staff to determine if this meets the requirements of this Interbasin Transfer Act approval.

Gall said that under the Water Management Act, streamflow triggers end by September 30th, so it is wrong to say that Reading is being treated differently than all other communities in the basin. Marler added that Reading only had a registration, not a permit, so the fact that they are not being subject to the same Water Management Act requirements as all the other towns is a matter of regulation. DEP does not have the authority to impose streamflow requirements on Reading. Zimmerman asked “Under the Water Management Act when registered volumes were first submitted, what was the question towns had to answer when they said this is what we use, this is what our registered volume should be?” Staff answered it was the average of withdrawals from 1981 to 1985. Zimmerman stated that Reading has never used anything even close to its registration. Mackin stated that the Town’s annual statistical reports (ASR) for this time period showed water use of 2.07 mgd, but DEP gave Reading a registration of 2.57 mgd. The ASRs were significantly below what they are registered for. Mackin said that this is true for the whole Ipswich basin. LeVangie said that he did not know the details for Reading, but this was not true

for the whole Ipswich basin. He added that it was not clear that the streamflow thresholds would be required of everybody else in the basin, as the permits were under appeal.

Tassi said that when the ASRs were submitted for registration, there was confusion as to raw and finished water. The original figure provided finished water volume. The town resubmitted the data to reflect raw water pumpage. This is the reason why the registration is 2.57 mgd, which reflects raw water pumpage.

Tisa said he had asked some questions of Staff prior to the meeting, but he would feel more comfortable if he could hear the answers directly from the Town. Why did Reading initiate this action in the first place, given the fact that it has a registered volume of water and doesn't need to do this; and why now? McIntire answered that the Reading Board of Selectmen has always been pro-active and understood the stress in the basin. The Town wanted to do something to address that problem. It conducted a long term water supply study that looked at a number of options. It was decided that purchasing a portion of Reading's supply from the MWRA was the best option and this was brought to town meeting, which appropriated the money. Town meeting has authorized more than \$3.1 million for the MWRA connection, and the Town has spent another \$200,000 in consultant fees. Reading had a contamination incident in 1993 when an oil truck overturned on Route 93, he said. This was the original impetus for imposing outdoor water use restrictions. The Town decided to keep these restrictions in place on a regular basis, after the site was cleaned up. Reading has been trying to reduce its water use. The initial proposal for purchasing MWRA water was for a May to September time period.

Tisa stated that DEP had expressed concerns about future well operations. There is concern that the MWRA connection is for lawn watering. McIntire said Reading intends to continue use of their wells, but they have agreed to revise their registration statement to include the water obtained from MWRA. Tisa asked LeVangie what will happen when the Town's registration expires--will they come in for a permit? LeVangie answered that there would be a registration renewal process. Tisa asked if the registration renewal process would give DEP the authority to impose restrictions, such as streamflow triggers. LeVangie said it was being discussed with DEP legal counsel. Tisa then followed up with the statement from the Staff Recommendation that DEP stated that continued pumping of the Reading wells at existing levels is not a viable option. Drury replied that Staff asked DEP's opinion because Reading has a local source capacity of 8.36 mgd. The question was why do they need more water? DEP said that at current rates, the wells are not viable during certain times of the year. The emphasis was on "current rates".

Tisa asked the Town that if the 1 mgd limit is equivalent to streamflow triggers, why is the Town not willing to accept the streamflow triggers. Tisa said his understanding is that the Town wants to be pro-active and that they are doing something to help the stream. So why not adopt the streamflow triggers? McIntire answered that Reading doesn't have the operational flexibility with the treatment plant now in place. Tisa asked, if this is the case now, would the town of Reading be willing to accept the condition when the new water treatment plant comes on line? McIntire said that the Town would need to look at that, once the new treatment plant was on-line. Zimmerman asked about the flexibility issue. Tassi answered that the treatment plant is a 6 mgd plant and to operate it at such a low rate, on and off, is impossible to do, due to the design of the facility. Tisa said that he's been wrestling with all the questions that have been raised here, on both sides, but he is uncomfortable with supporting this proposal without the streamflow triggers because the Staff has made tremendous strides in the past few years relative to the

stressed basin policy and working on the streamflow policy and he feels that if streamflow triggers are not imposed in the most single stressed basin in the state, when would they be applied?

Rhodes asked when DEP would review Reading's Water Management Act registration. LeVangie said all registrations will expire on January 1, 2008, so at some point in 2007 DEP will be reviewing the registration. Rhodes asked if there was anything to prevent the MWRA contract from being withdrawn. Simonson said once a contract is drawn, they can take whatever they need for 5 years.

Rich stated that Reading's proposal reduces its demand on the Ipswich basin by 60%, even without the streamflow triggers. Tisa said that he felt that streamflow triggers were the best science we have now and he'd feel more comfortable if streamflow triggers were imposed. Kennedy said he has come to rely on the technical analyses of the Staff. He sees no reason to doubt the accuracy of the analyses. He said he would be voting to support the transfer because the Interbasin Transfer Act very clearly looks at the impacts to the donor basin. The registered amount under the Water Management Act will not change as a result of this transfer. Zimmerman asked if the letter from Reading to DEP regarding amending the registration statement was legally binding. Could a third party go to court on this, he asked. Gildesgame answered that Reading was quoting the Secretary's Certificate on this. Drury said that the letter was between the Town and DEP, so she would defer to DEP. Gildesgame pointed out to Zimmerman that this letter requests that DEP include the language of the Secretary's Certificate in the Town's registration statement.

Simonson said if this remains an annual purchase from MWRA, the streamflow thresholds will rarely be triggered. She suggested that the WRC put back the October 31st restriction. She asked why the 219 mg was a "magic number". McIntire said the town had analyzed their demand from May through September and subtracted 1 mgd and came up 219 mg. Simonson said that what she characterized as a "somewhat arbitrary cutoff" is not being made on the river's need. She went on to say that October can be an important month in terms of low flows. The amount of money Reading would have to spend to buy a little bit more water from MWRA in October would not have a significant impact on their water rates, so they should be made to do that. Gildesgame pointed out that the analyses had been done for May through September, as well as May through October and showed that impacts to streamflow in the receiving basin were not very much different. Zimmerman restated his position that Staff's data was garbage. He then asked that the term calendar year be changed. Drury responded that the MWRA contracts run on a yearly basis. The Town plans on purchasing the water during the months of May through September however, if they don't use it all by September, they could then continue to purchase it through the end of the year. Haas added that if they did use it all before September, the Town would have to abide by the streamflow restrictions.

Simonson said that "this is nonsense the way it's written". Reading can buy up to 219 mg but they can't buy more! Marler answered that the nature of the Interbasin Transfer Act was to limit the amount of transfer, not increase it. Gildesgame pointed out that Simonson wanted Reading to buy more, yet she was unhappy with the impacts on the donor basin from the purchase of the amount requested by this application. Simonson answered angrily that the Draft Decision said that Reading will limit its purchase to no more than 219 mg per calendar year. "You are restricting what this town chooses to do outside the jurisdiction of the Commission! And I

would like to know how you have the right to do that?” Drury answered that Reading’s proposal was to purchase up to 219 mg. So they are restricted to what they had proposed, because that is what the analyses of the impacts to the donor basin were conducted on. To allow for a larger transfer would require additional analyses on the full transfer amount. Simonson responded that since the current analyses had determined that the impact on the donor basin is insignificant, why couldn’t the Commission require Reading to buy more water from the MWRA? Gildesgame said he didn’t know how the WRC had this authority. Contreas said that the town of Reading proposed to purchase this amount and we have to honor that. Simonson said that the Ipswich River is not getting optimum benefit from this proposal. As much as she opposed the entire request, her opinion is that if this was going to be approved, the Ipswich River should get the October benefit.

V O T E	<p>Clarkeson moved with a second by Contreas to accept the Staff Recommendation of December 9, 2004 to approve Reading’s application for admission to the MWRA under the Interbasin Transfer Act.</p> <p>The vote was 7 to 2 in favor of the motion.</p>
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Zimmerman asked if the purchase of 219 mg was an on-going calculation, so that the Commission will know as soon as the Town hits the limit, or is only annual reporting required, so the WRC won’t know about it until next year. McIntire answered that the Town would be reporting to the MWRA from May through September. Marler said that DEP and MWRA would be watching them. Zimmerman requested a complete transcript of the tape and the tape itself be sent to Margaret van Deusen of the Charles River Watershed Association. Gildesgame said he would endeavor to get that done.

Drury added that the Town’s Local Water Resources Management Plan (LWRMP) was discussed in June and July. It was provided to the WRC and it was also an appendix to the EIR. It was developed in accordance to the outline for these plans in the Performance Standards and in June, Staff recommended that the LWRMP be approved.

V O T E	<p>Contreas moved with a second by Rich to approve the Local Water Resources Management Plan as presented in June and July</p> <p>The vote was 7 to 1 in favor of the motion, with one abstention.</p>
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Agenda Item #4: Vote – Proposed changes to the Water Management Act Regulations

Zimmerman requested that Agenda Item #4 be taken out of turn because he had to leave soon. Haas reminded the Commission that this had been discussed last month. At that time, the changes were provided and explained. There has been one change on 310 CMR 36.31 which referred to the old DEM basin plans. Because this is too narrowly defined, it was decided to change this to allow for any information provided and developed by DCR and the WRC. Other than this, the regulations are the same as presented last month. Zimmerman asked if safe yield remains the same. Haas replied that nothing had changed on this. Haas clarified that since last month it hadn’t changed. Zimmerman stated that all the language concerning safe yield from the

previous regulations had been deleted and asked why. LeVangie replied that the definition was unworkable. Zimmerman stated that it had been unworkable for 12 years; why change it now? He asked “Are you concerned about a lawsuit?” Zimmerman suggested that the definition not be changed until the WMA advisory committee came up with new language concerning the calculation of safe yield. Gildesgame reminded the WRC that these regulation changes had been reviewed by the WMA advisory committee. Mackin said yes, but not all the recommendations had been adopted. She also noted that the committee hasn’t been officially appointed. Haas replied that earlier this year, the new Water Management Act policy had been adopted. He added that there was no interest in revisiting the policy. The reason to delete the obsolete language in the regulations, he said, is for consistency with the new policy, which is a much better tool. Permits have to be issued and it is acknowledged that the old method doesn’t work. He also reminded the WRC that the new definition of safe yield in the regulations was the statutory definition.

LeVangie said that they are still issuing permits and they cannot put everything on hold while a new definition is being worked out. Simonson said that all the new USGS studies and the new WMA and other policies indicated that there was “a better day around the corner.” If DEP makes a commitment to implement the policies in their permitting, then she is comfortable with the regulation changes. She said that the state needed to fund the studies necessary to obtain the data needed for permitting. LeVangie said that DEP was committed to looking long-term at these issues, as expressed through the Preamble proposed to be added to the regulations.

Rich said that his only minor concern is that he hopes this does not lead to a point where every basin in the Commonwealth becomes considered a stressed basin. This will take more control away from local officials. He understands that there are very stressed basins that need to be addressed, so he will vote to approve these regulation changes. This is a step forward.

Tisa asked Margaret Kearns to make some comments on behalf DFG. Kearns said that DFG thinks that the removal of a quantitative method for determining safe yield results in less protection for stream flow, whether DEP intends for this to happen or not. She said that because DEP is not near to developing a new quantitative methodology to determine safe yield, it is going to be years before this is remedied. She said DFG understood that the current definition doesn’t work, but if the language in the definition requiring the consideration of environmental protection and cumulative impacts are removed, a huge hole will be left. New regulations should include a date by which a new quantitative method will be put in place. The term “acceptable degree of risk” should remain. Tisa asked LeVangie if DEP considered the cumulative impact issue when revising the regulations. LeVangie said that DEP had considered this, and he did not agree that eliminating the definition would result in there being a gaping hole in environmental protection through the WMA. Kearns said that the existing regulations did require that cumulative impacts be considered. The proposed regulations have no requirement to look at cumulative impacts. The final regulations, she said, should define 'safe yield' to sustain the physical, chemical and biological integrity of surface waters, in keeping with the federal Clean Water Act. She suggested that if these regulations are approved, two changes be made: insertion of the date by which DEP will come up with a new safe yield methodology; and Section 36.31(1) should be changed to use the word “shall” instead of “may”, when listing the items to be considered in determining safe yield.

Mackin said “it gets old to be the token citizen on a group where your opinions are considered and then just ignored. This is another case of that...” Regarding 36.31(2), she said, the reason why it has been ineffective is because there is no consensus about what streamflow value should be used in the safe yield calculations. Now, she said, we are finally on the verge of coming close to an agreement and we are getting rid of the formula. The concept of safe yield as a quantity can’t even be agreed upon. It seems maddening. The changes proposed do not clarify how safe yield will be determined. These changes are not as well thought out as they should be, she claimed. Haas said that the WMA advisory committee had discussed this in depth. Zimmerman proposed a sunset clause for these changes. Haas said that any changes would need to go back to the WMA advisory board and that DEP had said last month it would not be accepting any new changes.

Zimmerman said “The Water Resources Commission really hasn’t changed that much in the last 13 years. It tends to interpret things narrowly, it tends to vote in lock-step with whatever a particular agency determines is the thing for the moment and outside public comment is basically spurned by this group.”

V O T E	Rich moved with a second by Clarkeson to accept the changes to 310 CMR 36.00 as presented and dated December 1 st .
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Zimmerman made a motion to amend the motion, to add a line to sunset the revisions to the regulations in section 36.31(2) by January 1, 2007. There was no second.

Tisa made a **motion to amend** the motion to add to section 36.31(1) that “may” be changed to “shall”. It was **seconded** by Zimmerman. Haas said that using “may” versus “shall” had been discussed in depth by the advisory the committee. Gildesgame questioned the authority of the WRC to amend DEP’s regulations. Kearns asked why DEP did not want to adopt the word “shall”. Haas said there may be cases where the data is not available or the thing being considered is not appropriate to the situation, where, if the word “shall” was adopted, DEP would be required to conduct an analysis on that topic. Discussion went back and forth about the meaning of “considered” as used in the context of “may” and “shall”. Mackin said that the Act says that DEP shall not exceed the safe yield. In deleting Section 2 under 36.31, she said, you remove the use of the word “shall”.

Gildesgame called for a vote on the amendment. He would check on the legality of having the WRC amend DEP’s regulations. LeVangie said that the Act said the WRC must review and approve DEP’s regulation changes, but not rewrite them. Zimmerman asked if that meant that the WRC had to either accept the regulation revisions in their entirety or reject them. Haas said the Commission had been given plenty of time to propose changes. Zimmerman said that attempts had been made to make these changes, and Haas responded that it was decided not to add the proposed changes. This has gone back and forth for months, he said. Zimmerman replied “Maybe the water resources commission doesn’t want to accept that decision!” Haas replied that if that was the case, the Commission could reject the proposed regulation changes.

Gildesgame again called for a vote on the amendment. He would verify with counsel the language in the Water Management Act and the authority of the WRC to amend the regulations. Tisa said that after listening to the discussion concerning the amendment he offered, if the information to consider something wasn't available, he suggested that the **amendment be amended** to say "shall, if the information is available". Gildesgame suggested that the WRC vote on the amendment before them: the vote was 7 to 2 to defeat the amendment. Zimmerman then asked "Do you guys all wear red coats?" He then said "this Commission is a joke!" It was suggested by some other Commissioners that if he felt that way, he could resign.

V	Gildesgame called for a vote on the original motion to accept the regulation revisions as presented.
O	
T	
E	The vote was 7 to 2 in favor

Stevenson said that not everyone could make every meeting. The minutes were not timely, so it was impossible for those who could not attend to know what had gone on at the previous meeting. She said it was a disservice to the public and other members of the Commission. She acknowledged that the WRC was trying to catch up with transcribing the minutes, but she said that having up to date minutes would serve both the public and the Commission well. Gildesgame agreed and said that WRC staff was working to catch up with transcribing the WRC minutes. He suggested that another way to find out information on a previous meeting was to call or email him, Drury, Marler or any members of the Commission who were at the meeting.

Simonson said that the issue of cumulative impacts is not eliminated by virtue of the language not being in the revised regulations because DEP could include whatever it wants to consider when issuing permits. She asked the WRC to make a motion to vote to provide guidance to DEP to consider cumulative impacts when it looks at impacts that might arise from issuing a new permit. This will help DEP in terms of potential lawsuits.

Zimmerman said that he would like to point out "that if this Commission actually did its job, which I respectfully represent that it does not, that if you go back in the record 13 years at least that I've voted on this Commission, the breakdown in votes on this Commission has been identical that entire time. ... So if this Commission learns to do its job, there would be no reason to use the courts of the state of Massachusetts to try to get relief from the decisions of this Commission, the Department of Environmental Protection and the Department of Conservation and Recreation." Gildesgame reminded Zimmerman that the decisions of the WRC had only gone to court twice. "Well that might change", retorted Zimmerman.

Agenda Item #2: Vote – Meeting Minutes for January, April, May and June 2004

Clarkeson asked if the minutes were posted on the WRC website. Gildesgame replied that they were not yet, but it was planned. Clarkeson said this might address the concerns of those who could not attend all the meetings. Gildesgame said the minutes would be posted. It was asked if they could be posted ahead of time as drafts, so that people would know what had transpired at a previous meeting before they attended the current meeting.

V	The minutes of the January 2004 meeting were accepted with three abstentions.
O	The minutes of the April 2004 meeting were accepted with two abstentions.
T	The meeting minutes for May 2004 were accepted with two abstentions.
E	The meeting minutes for June 2004 were accepted with two abstentions.

Meeting adjourned.

Meeting minutes approved 2/24/05